Supreme Court, U.S.
FILED

001419 MAR 13 2001

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Ray Sienkiewicz,

Petitioner,

v.

Larry Hart, individually, Charles Wilson, individually, Janet Reno, individually, William J. Clinton, individually, and Jill Babyack,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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23 pp

QUESTION PRESENTED

When a reasonable person would believe that a Court of Appeals is subject to sufficient extrajudicial influence as to appear incapable of impartial review of several related cases of great national importance, should the United States Supreme Court take whatever action is appropriate, including the issuance of a writ of certiorari, in order to avoid the appearance of impropriety?

PARTIES TO THE PROCEEDING

"Petitioner"

Ray Sienkiewicz

"Respondents"

Larry Hart, individually, Charles Wilson, individually, Janet Reno, individually, William J. Clinton, individually, and Jill Babyack

NOTE TO THE UNITED STATES SUPREME COURT CONCERNING PARTIES IN A RELATED ELEVENTH CIRCUIT CASE:

Prospective Petitioner: Ray Sienkiewicz of *Sienkiewicz v. McDougall, et a.l,* U.S. Court of Appeals No: 00-13805-II, a F.A.C.E. action for intimidating pro-life counselors with problems of judicial impropriety.

Prospective Respondents: John McDougall and Rod Shoap in *Sienkiewicz v. McDougall, et al.*

RELATED PETITIONS ALREADY FILED

Meredith T. Raney, Jr. v. Aware Woman Center For Choice, Inc., et al., Supreme Court Number: 00-1268.

Jane Roe, II v. Aware Woman Center For Choice, Inc., et al., Supreme Court Number 00-1301.

Meredith T. Raney, Jr. v. City of Melbourne, Florida, Supreme Court Number 00-1350.

Ray Sienkiewicz v. John McDougall, individually, et. al., Supreme Court Number: 00-1365.

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Petitioner, Ray Sienkiewicz, respectfully requests that a writ of certiorari be issued to review the decree of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The order of the magistrate judge of the District Court in *Ray Sienkiewicz v. Larry Hart, individually, Charles Wilson, individually, Janet Reno, individually, William J. Clinton, individually, and Jill Babyack*, Case Number 2:00-CV-57-FTM-25D is shown at Appendix A. The United States Court of Appeals for the Eleventh Circuit, in *Sienkiewicz v. Hart, et al.*, Case Number: 00-14228-FF, ordered that the appeal be dismissed for lack of jurisdiction; this order is shown as Appendix B. The decree of the United States Court of Appeals concerning the petition for rehearing, which it construed as a motion for reconsideration, is found at Appendix C.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on November 9, 2000. The Court of Appeals denied a timely petition for rehearing, construed as a motion for reconsideration, on December 29, 2000.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article III of the United States Constitution, which states in pertinent part:

Section 1. . The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour .

This case involves the federal statute called Freedom of Access to Clinic Entrances Act, (F.A.C.E.) 18 U.S.C.§ 248, which states in pertinent part:

> (a) **Prohibited activities.** - Whoever -
>
> **(1)** by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (c) **Civil remedies. -**
>
> **(1) Right of action**.-
>
> **(A) In general.**-Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services . . .
>
> **(e) Definitions.-** As used in this section:
>
> **(1) Facility.-** The term "facility" includes a

hospital, clinic, physicians office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(5) Reproductive health services.- The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

There is also reference to the federal statute providing for the disqualification of justices, judges, or magistrates under 28 U.S.C. §455, which states, in pertinent part :

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

1. Where he has a personal bias or prejudice concerning a party . . .

4. He knows that he . . .has . . .any other interest that could be substantially affected by the outcome of the proceeding;

STATEMENT OF THE CASE

A. Background.

Ray Sienkiewicz, like his counterpart Meredith Raney of the Brevard County cases also pending before this Court, recognized the evil of abortion. He first focused on the harm being done to the unborn child but as time went by, he realized that distraught young women trying to cope with crisis pregnancies needed his help.

Ray Sienkiewicz found that the only way to reach pregnant girls, who were often brought long distances to abortion clinics, was to meet them at the doorway to the clinic where he could hand them written referral information about relevant local resources and services; speak softly with them about their problems and needs; and warn them about the various site-specific dangers, such as AIDS.

This sympathetic volunteer attended training courses for pro-life referral counselors, joined a professional association of referral counselors and carried and displayed his credentials at the abortion facility he first adopted. This was the Azima facility featured in *Sienkiewicz v. McDougall*, U.S. Supreme Court Number 00-1365. There he regularly provided F.A.C.E.-protected services for more than a year.

The move by pro-life activists to become loving and lawful referral counselors at abortion clinics has proven to be a most constructive and effective response to the many dilemmas faced by young women trying to cope with crisis pregnancies. It has prevented a great many abortions. It has scared the abortion industry so badly that this industry enlisted the "top people" in Washington in an effort to stop the

counselor movement any way they could.

When unlawfully prevented from counseling at Azima's, Ray Sienkiewicz then adopted the Broadway facility in Fort Myers which is the subject of this case. F.A.C.E. violations there were engineered by the same top officials as in *McDougall*. (*supra)* as part of an organized national campaign to deprive pregnant girls at abortion clinics of referral counselors' life-saving services. These officials were assisted in the present F.A.C.E. violations by the clinic manager and the local police chief of police.

B. Related Cases.

There were six related F.A.C.E. appeals which are split in two groups: the Brevard County, Florida cases all concern the abortion clinic featured in *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994). Those cases were all filed in the Orlando Division of the Middle District of Florida; all three cases were assigned to District Judge Patricia Fawsett who summarily dismissed each of those cases. The wrongful conduct in those cases originated in Brevard County.

The Lee County, Florida cases, while also civil actions for F.A.C.E. violations, have a major distinguishing characteristic: the initial decision to violate F.A.C.E. came from the highest of our political officials on behalf of the abortion industry, and involved the corruption not only of local law enforcement officers[1] but also members of the federal

[1]Local lawmen have had the greatest respect and awe for U.S. Department of Justice officials. Thus U.S. Attorneys had little problem misleading these lawmen. The result was a cadre of Justice Department officers with the moral standing of Mafia hit-men and local police in the same quagmire in this modern Hitleresque pogrom as was formerly denounced at Nuremberg.

judiciary. Both F.A.C.E. cases which resulted from this plot were filed against local lawmen; the second case also included as named defendants, the former President, William J. Clinton, the former U.S. Attorney General, Janet Reno, and a former U.S. Attorney, now a judge on the U.S. Court of Appeals, Eleventh Circuit, Charles Wilson. All of these officials were sued only on an individual basis.

When a pregnant mother died in August, 2000, of mistreatment at the Azima Clinic, the legal consequences were greatly increased for Wilson, Reno, and Clinton: a death had occurred during a F.A.C.E. violation. Given his close relationship with the Lee County lawmen, it is expected that Charles Wilson heard of the tragedy immediately, especially since life in prison is a consequence of a F.A.C.E. violation involving death. Now, there was enormous pressure on Wilson to provide exculpatory precedent for himself and his associates by using the related cases to create an escape hatch. The obvious choices to be utilized were *Raney v. Aware Woman Center For Choice, Inc.* (*supra*), and *Sienkiewicz v. McDougall* (*supra*).

C. The Proceedings Below

Ray Sienkiewicz amended his F.A.C.E. violation complaint in order to sue several of the defendants in their individual capacities, reasoning that their official duties did not include felonious activities for personal gain.

The magistrate assigned to his case was the same one assigned to *Smith and Sienkiewicz v. McDougall*, U.S. Supreme Court Number 00-1365, the parallel case where the national effort to intimidate pro-life referral counselors was first presented to the federal courts.

Since the magistrate may have been paid protection

money by McDougall to sabotage the first case, it was logical to believe that the magistrate would conduct himself the same way in the second case; in other words, it was reasonable to doubt his impartiality.

The initial activity of the magistrate enforced this concern of extrajudicial bias when the magistrate ignored the Local Rules of the Middle District in his first decision.

Thus, Ray Sienkiewicz asked the magistrate to disqualify himself. When the magistrate refused to do so, the counselor appealed.

While the counselor cited as a jurisdictional basis reasons for his appeal the need to protect the appearance of justice in a case of national importance, the Court of Appeals ignored this reason and dismissed the appeal. It later refused to change that decision.

Meanwhile, a court of appeals panel had entered what seems to be a hasty decision in *Raney v. Aware Woman*, 224 F.3d 1266 (11th Cir. 2000), on August 30, 2000, which decision would also appear to exonerate Wilson, Clinton and Reno in this present case. And the next day, August 31, 2000, a Court of Appeals panel which included Charles Wilson, dismissed the *Sienkiewicz v. McDougall* appeal , Supreme Court Number 00-1365, thus laying the foundation for protection of the magistrate and others in this case. Predictably, both decisions were entered a few days after the Azima clinic death.

REASON FOR GRANTING THE WRIT

The United States Supreme Court should take whatever action is appropriate, including the issuance of a writ of certiorari, in order to avoid the appearance of impropriety when a reasonable person would believe that a Court of Appeals is subject to sufficient extrajudicial influence so as to appear incapable of impartial review of several related cases of great national importance.

This lawsuit, which included Charles Wilson as a defendant, may have been the most compelling reason for the adverse appellate rulings in *Raney v. Aware Woman,* (*supra*), Raney *v. City of Melbourne* (*supra*), and *Sienkiewicz v. McDougall* (*supra*), and for the delay in deciding *Jane Roe, II v. Aware Woman,* Supreme Court Number 00-1301. Ray Sienkiewicz suggests to the United States Supreme Court that a well-informed, reasonable observer would think so.

Well-Informed

Possession of the essential facts and circumstances is a requisite for an objective decision concerning the appearance of judicial impropriety. This requirement was cited by Chief Justice Rehnquist in his recent statement in *Microsoft Corporation v. United States*, United States Supreme Court No. 00-139, and *New York v. Microsoft Corporation,* United States Supreme Court No. 00-261, referencing *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1309 (2nd Cir. 1988). Those facts and circumstances concerning this case should then be reviewed.

William J. Clinton, the former president, is familiar with the federal statute, Freedom of Access to Clinic Entrances, called F.A.C.E. He signed it into law in 1994.

Janet Reno, the former U. S. Attorney General, and Charles Wilson a former U.S. Attorney, are both familiar with F.A.C.E. They convinced the U.S. Court of Appeals, Eleventh Circuit, that this Act was constitutional in the case of *Cheffer v. Reno*, 55 F.3d 1517 (11th Cir. 1995).

These politicians, then, acted deliberately, with knowledge of the consequences, when they concocted the plot to help the abortion industry increase the number of abortions.

The means to that end was the prevention of pro-life referral counselors from lawfully providing life-saving information and services to young women and girls at abortion clinics because such help resulted in fewer abortions. This objective was achieved by using local police as little more than attack dogs to keep these law-abiding referral counselors off the sidewalks within the boundaries of abortion facilities.

The trial run occurred in July, 1999 at the Azima clinic in North Fort Myers, Florida where referral counselors had been on duty for more than two years and occurred only after Charles Wilson was assured of his elevation to the appellate bench. These first F.A.C.E. violations resulted in the District Court action *Sienkiewicz v. McDougall* (*supra*). Ray Sienkiewicz was one of the counselors threatened.

Thereafter, Ray Sienkiewicz adopted the other Lee County abortion clinic at Broadway Avenue in Fort Myers as the facility in which he would provide referral counseling service. When prevented from providing these services by police controlled by the chief and the abortion clinic manager, acting in concert with Clinton, Reno and Wilson, Ray Sienkiewicz filed a second F.A.C.E. action resulting, finally, in this petition.

The following April, 2000, the counselor's attorney

received an anonymous communication which ultimately triggered the unsuccessful requests for disqualification of the magistrate in both the Azima and Broadway cases.

While appeals of those orders and a later dismissal of the Azima case were pending with the Court of Appeals, it was reported in August, 2000 that a pregnant mother had died of mistreatment at the Azima clinic. The legal consequences for Wilson, Reno and Clinton were now enormous. Their futures were then in the hands of the other Eleventh Circuit judges.

Such is the information which would be possessed here by an observer who was "well-informed".

Reasonable Observer

The reasonable observer test is codified in 28 U.S.C. § 455. In the decision of *Liteky v. United States*, 510 U.S. 540 (1994), this Court stated at page 1154, " [R]ecusal was required whenever impartiality might reasonably be questioned".

Under these standards, judges should not rule in cases where a reasonable observer would doubt their impartiality.

Application of Standard

For the first time, the United States Supreme Court is presented with a series of cases which not only deal with a new aspect of the abortion debate but also where protection under the F.A.C.E. statute is sought for pro-life persons relying on the whole body of Abortion jurisprudence from *Roe v. Wade*, 35 L.Ed. 2d 147 (1973), and *Doe v. Bolton*, 35 L.Ed. 2d 201 (1973), to *Stenberg v. Carhart*, 147 L.Ed. 743 (2000), and *Hill v. Colorado*, 147 L.Ed. 2d 597 (2000).

These referral counselors have chosen to obey the law of the land and cloak themselves in its protection. They have placed a premium on the lives and health of women dealing with crisis pregnancies - as has the United States Supreme Court.

Decisions such as *Schenck v. Pro Choice Network*, 519 U.S. 357 (1997), have furnished the standards under which these law-abiding pro-life counselors have operated within the territorial boundaries of F.A.C.E.-defined facilities.

That these pro-life counselors are protected under F.A.C.E. is clear. Any district court orders to the contrary should have been promptly reversed by an impartial court of appeals. Clinton, Reno, and Wilson would have considered that possibility.

A reasonable observer would know that these three politicians/lawyers would not only just seek to appease the abortion industry; they would want to avoid the civil and criminal consequences for their violations of F.A.C.E. Thus, the essential element of the unlawful program was the appointment Wilson to the federal appellate bench. There this court of appeals judge, appointed for life, could overshadow the district judges and influence the outcome of any appeals from those decisions below unfavorable to the abortion industry. At the same time he would be protecting himself (and his associates) from any civil or criminal liability. (The court of appeals appointment was a most cunning tactic.)

Furthermore, a reasonable observer would believe that there would be a great deal of unspoken compulsion for other appellate judges within that circuit to exonerate their colleague with whom they would work for the rest of their lives; such judges would be slow to create any unfavorable precedent.

However, the death of a pregnant mother in the Azima case changed the timetable and required unexpected haste: a colleague was now in the greatest legal danger.

A reasonable observer could believe that these conditions resulted in the unfortunate decisions criticized in the related cases of *Raney v. Aware Woman* (*supra*), and *Raney v. City of Melbourne*(*supra*), and also *Sienkiewicz v. McDougall*(*supra*).

The decision in this particular case specifically runs counter to *Liteky v. United States*, 114 S.Ct. 1147 (1994), *In Re Corrugated Container Antitrust Litigation*, 614 F.2d 958 (5th Cir. 1980), and the decision of the Tenth Circuit in *Mitchell v. Maynard*, 80 F.3d 1433 (10th Cir. 1996).

Liteky v. United States, (*supra*), would require that no federal judges be allowed to adjudicate a matter where an extrajudicial source created the appearance that the judges' impartiality might reasonably be questioned.

In Re Corrugated (*supra*), decided by the Fifth Circuit in 1980, held, *inter alia*, that the question of appealability of a recusal order should be overlooked in a case where the stakes are extraordinarily high; the appellate court should review the merits of the contentions.

In a like tone, the Tenth Circuit stated in *Mitchell v. Maynard* (*supra*), at page 1450, "We are also mindful that charges of misconduct or prejudice leveled at trial judges should not be lightly made and, once made, should not be casually treated by a reviewing court."

There is at least the appearance that "good Behaviour" has not been maintained in the federal courts below as required by Article III, Section 1 of our Constitution. There is also the appearance that 28 U.S.C. §455 (a), (b)(1) and (b)(4)

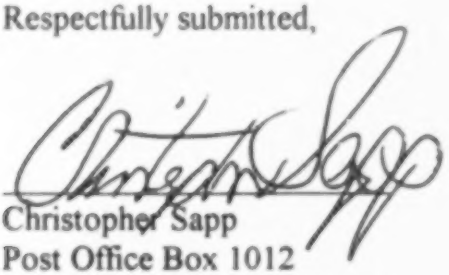
has been violated.

If Clinton, Reno and Wilson have planned correctly, they will succeed in unlawfully sacrificing the lives and health of pregnant girls and young women in order to enrich the abortion industry. However, they could only speculate that the U. S. Supreme Court would allow this to happen. Ray Sienkiewicz fervently prays that Clinton, Reno and Wilson are wrong.

CONCLUSION

Ray Sienkiewicz respectfully requests that this Court grant a writ of certiorari and any other appropriate relief in order to avoid the appearance of impropriety in the circuit court of appeals. The federal courts must never become the equivalent of "getaway cars", to be used by the politically powerful to escape liability for felonies in which innocent pregnant women have died. Nor should appointments to the federal courts of appeal be awarded as payoffs for detestable crimes whose victims are the millions of desperate young women of this nation seeking help with perhaps the most important decision of their lives: their health and lives must be safe-guarded by the resources so lovingly and lawfully offered them by pro-life referral counselors such as Ray Sienkiewicz.

Respectfully submitted,



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APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

Case No. 2:00-cv-57-FtM-25D
(Filed July 31, 2000)

RAY SIENKIEWICZ,
Plaintiff,
vs.

LARRY HART, et al.,
Defendants.

ORDER

This cause came on for consideration without oral argument on the following motion filed herein:

MOTION: REQUEST FOR DISQUALIFICATION OF MAGISTRATE (Doc. No. 13)

FILED: July 12, 2000

THEREON it is ORDERED that the motion is DENIED.

The Plaintiff requests that this Court recuse itself from this case. The Plaintiff refers to another case, *Smith v. McDougall*, 2:99-cv-385-FtM-21D wherein Mr. Sienkiewicz, also a Plaintiff, requested that the Court recuse itself. Mr. Sienkiewicz argues that the same reasons for disqualification

in the *Smith* case apply to this case. In the *Smith* case, the Court refused to disqualify itself. In *Smith*, Sienkiewicz argued that the Court should disqualify itself on two grounds: first, based upon its ruling in its Report and Recommendation which granted the Defendant's Motion to Dismiss; and second, based upon attorney Christopher Sapp's allegations that anonymous sources informed him that I help my wife "run her psychological counseling service" and that her "main customer for this service is Sheriff John McDougall." (See, Case No. 2:99-cv-385-FtM-21D, Doc. No.14, p. 1, and Exh. B) The second argument regarding Sheriff McDougall does not apply in the instant case because Sheriff McDougall is not a party to this action.

"Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C.§455 The standard for disqualification under §455 is well-settled.

> [U]nder . . . Section 455 an allegation of bias sufficient to require disqualification must demonstrate that the bias is personal as distinguished from judicial in nature. The alleged bias and prejudice, in order to be personal and therefore disqualifying, "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States v. Grinnell Corp.*, 384 U.S 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed.2d 778 (1966). Thus, a motion for recusal may not ordinarily be predicated upon the judge's rulings in the same or a related case. An exception to the general rule that the disqualifying bias must

> stem from extrajudicial sources is the situation in which "such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias against a party." *Davis v. Board of School Comm'rs*, [517 F.2d 1044, 1051 (5th Cir. 1975)].

United States v. Phillips, 664 F.2d 971, 1002-03 (5th Cir. Unit B 1981) (footnotes omitted); *see also Jaffe v. Grant*, 793 F.2d 1182, 1188-89 (11th Cir. 1986). Applying the above standard here, the Court finds that Plaintiff's Motion should be denied. Any bias alleged by the Plaintiff is based upon a prior report and recommendation entered by this court. The report and recommendation was based upon the law and the information supplied in that case. No extrajudicial sources were used, and therefore, the Court will not recuse itself in this case.

DONE and **ORDERED** in Chambers in Ft. Myers, Florida this 31st day of July, 2000.

/s/
DOUGLAS N. FRAZIER
UNITED STATES
MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record/Unrepresented Parties

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-14228-FF

(Filed November 9, 2000)

RAY SIENKIEWICZ,

Plaintiff-Appellant,

versus

LARRY HART, individually, and as Chief of Police for the City of Fort Myers, Florida, JILL BABYACK, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

Before: BLACK, CARNES, and MARCUS, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED for lack of jurisdiction. The magistrate judge's July 31, 2000, order is not final and appealable because the district court has not reviewed it at the time the appellant filed his notice of appeal on July 31, 2000. See 28 U.S.C. §§636, 1291; Perez-Priego v. Alachua County Clerk of Court, 148 F. 3d 1272, 1273 (11th Cir. 1998).

Furthermore, even if the district court had reviewed it, the magistrate's order would not be immediately appealable. See In re Corrugated Container Antitrust Litigation, 614 F.2d 958, 960-1 (5th Cir.); cert. denied, 449 U.S. 888 (1980).

Appellees' motion to strike Sienkiewicz's initial brief and motion to stay briefing schedule," is DENIED AS MOOT.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-14228-FF

(Filed Dec. 29, 2000)

RAY SIENKIEWICZ,

Plaintiff-Appellant,

versus

LARRY HART, individually, and as Chief of Police for the City of Fort Myers, Florida, JILL BABYACK, CHARLES R. WILSON, JANET RENO, individually and as Attorney General of the United States, WILLIAM J. CLINTON, individually and as President of the United States,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

Before: BLACK, CARNES and MARCUS, Circuit Judges.

BY THE COURT:

The appellants' petition for rehearing construed as a motion for reconsideration of this Court's November 9, 2000,

order dismissing this appeal for lack of jurisdiction, is DENIED.